

# **REQUEST FOR PROPOSALS**

## **SURVEY OF REGULATED APPLIANCES**



RFP #400-02-401  
State of California  
California Energy Commission  
March 2003

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## **I. Introduction**

### **BACKGROUND**

The California Appliance Efficiency Regulations require manufacturers of numerous types and designs of energy using appliances to report the performance of those appliances to the California Energy Commission if they are to be sold or offered for sale in California. On November 27, 2002, a new edition of these regulations took effect, and several additional types and designs of appliances became regulated. The Commission needs to obtain reliable information to determine the relationship between the information on file, and the actual models being sold or offered for sale. This information will enable the Commission to better enforce its Appliance Efficiency Regulations.

### **WHAT IS THE PURPOSE OF THIS RFP?**

The purpose of this Request for Proposal (RFP) is to select an experienced Contractor who has previous experience in conducting surveys. The successful Contractor will determine what models of appliances are being sold or offered for sale in California; determine what models of appliances have been certified to the Commission; and determine what models have not been but should be certified.

### **HOW IS THIS RFP ORGANIZED?**

This Request for Proposal (RFP) is organized into the following six sections:

- |             |  |
|-------------|--|
| Section I   | provides a summary and administrative overview of the RFP Requirements.                                  |
| Section II  | explains the work to be accomplished, and deliverables and due dates.                                    |
| Section III | explains in detail the format, documents and technical expertise needed to submit a successful proposal. |
| Section IV  | provides administrative detail including legal requirements of the RFP.                                  |
| Section V   | explains the evaluation process.   |

### **HOW MUCH FUNDING IS AVAILABLE?**

There is a maximum of up to \$75,000 available for the contract resulting from this RFP. This is a three-year contract and funding for this RFP comes from fiscal year 2002/03. This is a task reimbursement contract (separate cost for each task) with a ceiling on the total contract amount. The Commission reserves the right to increase or decrease the amount of any contract as needed to meet budget or program requirements.

Partial funding for this RFP is also subject to the approval of the United States Department of Energy and any additional restrictions, limitations, or conditions imposed by the United States

## **I. Introduction, Continued**

Department of Energy, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this agreement.

### **WHAT ARE THE KEY ACTIVITIES AND DATES?**

Key activities and times for this RFP are presented below. This is a tentative schedule, please call the Contracts Office to confirm dates.

<b>ACTIVITY</b>	<b>ACTION DATE</b>
RFP Release	March 12, 2003
Deadline for Written Questions	March 25, 2003, 5:00 p.m.
Pre-Bid Conference	March 25, 2003, 1.30 p.m.
Distribute Questions/Answers and Addenda (if any) to RFP	As necessary
Deadline to Submit Proposals	May 1, 2003
Interviews (if necessary)	May 8, 2003
Notice of Proposed Award	May 14, 2003
Commission Business Meeting	June 25, 2003
Contract Start Date	June 30, 2003
Contract Termination Date	March 31, 2005

### **HOW DO I RESPOND TO THIS RFP?**

Responses to this solicitation shall be in the form of a Technical and Cost Proposal according to the format described in Section III. The Technical Proposal shall document the Bidder's experience, qualifications, project organization and approach to perform the tasks described in the Work Statement found in Section II, and the Cost Proposal shall detail the Bidder's budget to perform such tasks.

### **HOW CAN I OBTAIN FURTHER INFORMATION?**

A Pre-Bid Conference will be held to answer questions. Please call (916) 654-4392 to confirm the time and date. Bidders are encouraged to attend this informational meeting:

**March 25, 2003, 1:30 p.m.**  
**California Energy Commission**  
**1516 9<sup>th</sup> Street, Hearing Room B**  
**Sacramento, California 95814**

Potential Bidders may ask questions about the requirements of this RFP. Bidders must prepare their questions in writing and send or FAX them to the Contact Person (see Who Do I Contact?). At the option of the Commission, questions may be answered orally at the Pre-bid Conference or

## **I. Introduction, Continued**

in writing. All questions will be answered in writing and will be distributed to recipients of this RFP sometime after the Pre-Bid Conference and posted on the Commission's Web Site at [www.energy.ca.gov](http://www.energy.ca.gov). Deadline for written questions is March 25, 2003, by 5:00 p.m.

### **WHO DO I CONTACT?**

This RFP is available through the Commission's Web Site at:  
[www.energy.ca.gov/contracts](http://www.energy.ca.gov/contracts) Copies may be obtained by calling or writing:

California Energy Commission  
1516 Ninth Street, MS-18  
Sacramento, California 95814  
Telephone: (916) 654-4788  
FAX: (916) 654-4423

Questions or clarifications about this RFP should be directed to:

ELIZABETH STONE, CONTRACT OFFICER  
California Energy Commission  
1516 Ninth Street, MS-18  
Sacramento, California 95814  
Telephone: (916) 654-5125  
FAX: (916) 654-4423

#### Verbal Communication

Any verbal communication with a Commission employee concerning this RFP is not binding on the State or the Commission and shall in no way alter a specification, term, or condition of the RFP.

### **WHAT ARE MY RESPONSIBILITIES FOR SUBMITTING A PROPOSAL?**

Bidders must take the responsibility to:

- Carefully read this entire RFP
- Ask the appropriate questions in a timely manner
- Submit all required responses in a complete manner by the required date and time
- Make sure that all procedures and requirements of the RFP are followed and appropriately addressed
- Carefully reread the entire RFP before submitting a proposal.

## **II. Work Statement**

### **ABOUT THIS SECTION**

This section describes the contract work statement including the tasks the winning bidder (“Contractor” or “Prime Contractor”) will be asked to perform under the direction of the Commission Contract Manager.

### **BACKGROUND**

The California Appliance Efficiency Regulations has since 1976 required manufacturers of numerous types and designs of energy using appliances to report the performance of those appliances to the California Energy Commission if they are to be sold or offered for sale in California. On November 27, 2002, a new edition of these regulations took effect, and several additional types and designs of appliances became regulated. The Commission needs to obtain reliable information to determine the relationship between the information on file, and the actual models being sold or offered for sale. This information will enable the Commission to better enforce its Appliance Efficiency Regulations.

### **GENERAL REQUIREMENTS**

The Contractor shall conduct a series of surveys to determine what models of appliances are being sold or offered for sale in California, which models have been certified and which models have not been certified, but should be. The appliances fall into the following thirteen specified groups:

Appliance Group A	Commercial refrigerators and freezers
Appliance Group B	Refrigerating canned and bottled beverage vending machines
Appliance Group C	Infrared gas space heaters (excluding patio heaters)
Appliance Group D	Commercial clothes washers
Appliance Group E	Food service equipment and patio heaters
Appliance Group F	Ballasts designed for use with T5 or T8 fluorescent lamps
Appliance Group G	Heat pump water heaters, hot water dispensers, and mini-tank electric water heaters
Appliance Group H	Tub spout diverters
Appliance Group I	Traffic signals, exit signs, and luminaries
Appliance Group J	Transformers
Appliance Group K	Spot air conditioners, ground source heat pumps, ground water source heat pumps, gas air conditioners, and computer room air conditioners
Appliance Group L	Non-packaged boilers
Appliance Group M	Small gas furnaces designed for use with a three phase electrical supply.

## **II. Work Statement, Continued**

For each group, only those appliances within the scope of the Appliance Efficiency Regulations (20 CCR 1601) are within the scope of this contract.

The tasks are divided as follows:

Task 1 A	Monthly progress reports
Task 1 B	Annual report
Task 1 C	Final report
Task 2	Initial plan
Task 3 A	Survey of Group A appliances
Task 3 B	Survey of Group B appliances
Task 3 C	Survey of Group C appliances
Task 3 D	Survey of Group D appliances
Task 3 E	Survey of Group E appliances
Task 3 F	Survey of Group F appliances
Task 3 G	Survey of Group G appliances
Task 3 H	Survey of Group H appliances
Task 3 I	Survey of Group I appliances
Task 3 J	Survey of Group J appliances
Task 3 K	Survey of Group K appliances
Task 3 L	Survey of Group L appliances
Task 3 M	Survey of Group M appliances

### **TASK 1 - CONTRACT MANAGEMENT**

#### **MONTHLY PROGRESS REPORTS**

The Contractor shall submit monthly progress reports to the Commission which describe:

- Monthly progress in each task
- The degree of completion for each task
- Current and cumulative budget expenditure by task
- Cumulative contract expenditures
- Variance from planned expenditure schedule
- Status of deliverables
- Problems, and other information requested by the Commission Contract Manager

These reports are due within 15 working days after the end of each month. The Commission Contract Manager will specify the report format and the number of copies to be submitted. All monthly progress reports will coincide with the invoice period.

## **II. Work Statement, Continued**

### **INVOICES**

The Contractor shall prepare an invoice for all contract expenses performed. The official invoice is to be submitted to the Commission's Accounting Office. The Commission's Contract Manager will specify the invoice format. All Contractor invoices must identify charges by task.

### **SUBCONTRACTORS**

In the event subcontractors are part of the Contractor's proposal, the Contractor shall manage and coordinate subcontractor activities. The Contractor is responsible for the quality of all subcontractor work and the Commission will assign all work to the Contractor. When new subcontractors are hired or added, the Contractor shall provide the Commission with updated Disabled Veteran Owned Business Enterprise (DVBE) forms.

The Contractor will work directly with and report to the Commission's Contract Manager on contract status and subcontractor work assignments and progress. Contractor will coordinate subcontractor accessibility to the Commission's Contract Manager.

The Contractor shall require subcontractors to provide invoices that correctly identify expenses charged to each contract task. The Contractor shall also provide subcontractor invoices for invoice payments, showing funds authorized, invoices submitted, and status.

The Contractor shall require subcontractors to copy the Commission's Contract Manager with all final, approved work statement deliverables. All work statement deliverables from the contractor team must be submitted as drafts for review and comment to the Commission project manager. After staff review, the approved deliverable shall be copied to the Contract Manager.

### **ANNUAL REPORT AND FINAL REPORT**

One annual report (per year) and one final report (at the end of the contract) shall be prepared which include a description of the overall project, the work accomplished during the year (in the case of the annual report) or the entire contract (in the case of the final report), the effectiveness of the contract in meeting the objectives of the program, and future activities recommended to increase the effectiveness of the program.

At the conclusion of the contract, the Contractor shall provide a comprehensive final report, and a brief summary of the report, to the Commission Contract Manager. The report shall be prepared in language easily understood by the public or laypersons with a limited technical background. A draft of the final report must be reviewed and approved by the Commission Contract Manager prior to becoming final. The draft report must be received by the Contract Manager 45 days prior to the termination date indicated in the term of the contract. The Contractor shall provide 10 copies of the final report, a reproducible camera-ready master in black ink, and an electronic copy in a format to be determined by the Commission Contract

## **II. Work Statement, Continued**

Manager. The Contractor shall meet with the Commission to present the findings, conclusions, and recommendations. The final report must be delivered to the Commission Contract Manager 30 days before the termination date indicated in the term of the contract.

A draft Final Report is due three months prior to the end of the contract. The Final Report and a 200-word abstract are due no later than thirty days prior to the end of the contract. The report shall be prepared in language easily understood by the public or laypersons with a limited technical background. Drafts of the annual and final reports must be reviewed and approved by the Commission Contract Manager prior to becoming final. The Annual and Final Reports shall include an analysis of:

- the work accomplished during the contract
- the effectiveness of this contract in meeting the objectives of the program
- future activities recommended to increase the effectiveness of the program

The Contractor shall meet with the Commission to present the findings, conclusions, and recommendations. The final report must be delivered to the Commission Contract Manager at least 30 days before the termination date indicated in the term of the contract.

The outline of the annual and final reports shall be prepared as indicated in the terms and conditions of the contract and the following:

Title Page

Executive Summary: Describe the contract goals, how the contract work was implemented, size, schedule, source of project funds, number of projects funded, and provide an overview of results from the contract listed by program (task) area.

Abstract: Limited to 150 to 250 words. This abstract shall be sufficient to describe the contract goals, technical approach, work completed and results.

Table of Contents: Organize the report by program area (task number).

Contract Results: Each task shall be summarized (100 to 200 words). Each summary shall include the specific request, results of the work performed, and the conclusions and/or recommendations developed by the work. Each subcontractor shall be responsible for writing its own summaries and forwarding them to the Prime Contractor, and the Prime Contractor shall be responsible for editing and combining these summaries into the reports.

Deliverables:

Monthly Progress Reports  
Annual Report  
Final Report

15<sup>th</sup> of each Month  
June 30, 2004  
March 31, 2005

## **II. Work Statement, Continued**

### **TASK 2 - INITIAL PLAN**

The Contractor shall develop an initial plan for the contract indicating the types of inquiries that will be made for each Appliance Group. The Contractor shall compile a list of appliance models of each of thirteen specified groups of appliances being sold or offered for sale in California, using the following methods for each group:

- At least five phone inquiries to manufacturers, wholesalers, and/or retailers;
- At least four site visits to locations in California where sales are made;
- A website search of manufacturers, wholesalers, and/or retailers.

Deliverable: Initial Plan

Due Date: August 31, 2003

The Commission Contract Manager shall approve plan before beginning Task 3.

### **TASK 3 - SURVEYS**

The Contractor shall conduct the surveys per the approved plan. The Contractor shall, for each appliance group, compile three lists of appliance models.

The first list shall contain those models that the contractor has found to be offered for sale in models California. The second list shall contain models listed in the Commission's Active Appliance Database, and identify which of the appliance models appear to contain questionable data. The third list shall contain those models that are being offered for sale in California but are not included in the Commission's Active Database.

Deliverable: Three lists of appliance models for Appliance Group A  
Three lists of appliance models for Appliance Group B  
Three lists of appliance models for Appliance Group C  
Three lists of appliance models for Appliance Group D

Due Date: October 31, 2003

Deliverable: Three lists of appliance models for Appliance Group E  
Three lists of appliance models for Appliance Group F

Due Date: February 28, 2004

Deliverable: Three lists of appliance models for Appliance Group G  
Three lists of appliance models for Appliance Group H

## **II. Work Statement, Continued**

Due Date: June 30, 2004

Deliverable: Three lists of appliance models for Appliance Group I  
Three lists of appliance models for Appliance Group J  
Three lists of appliance models for Appliance Group K

Due Date: October 31, 2004

Deliverable: Three lists of appliance models for Appliance Group L  
Three lists of appliance models for Appliance Group M

Due Date: February 28, 2005

### III. Proposal Format and Required Documents

#### ABOUT THIS SECTION

This section contains the detailed technical and mandatory proposal format requirements and the approach for the development and presentation of proposal data. The format is prescribed to enable the State to evaluate each proposal uniformly and fairly. Format instructions must be adhered to, all requirements and questions in the RFP must be responded to, and all requested data must be supplied.

#### HOW MANY COPIES OF MY PROPOSAL DO I SUBMIT?

Mail or deliver an **original Proposal and 4 copies** to the address given in Section III. The Bidder must submit the technical and cost proposals in two separately sealed envelopes labeled Volume 1, Technical Proposal and Volume 2, Cost Proposal, for Request for Proposal #400-02-401.

#### WHAT IS THE REQUIRED FORMAT?

##### Volume 1

The following topics constitute the mandatory order of presentation for a Proposal. Two-sided copying is preferred:

##### Section 1—Administrative Response

- Cover Letter
- Table of Contents
- Required Forms
  - ✓ Contractor Status Form
  - ✓ Small Business Preference Certification letter (if applicable)
  - ✓ Completed Disabled Veteran Business Enterprise forms
  - ✓ Certification Clauses Package

##### Section 2—Technical Response

- Summary of Approach to Tasks in Work Statement
- Administrative Resources
- Team Qualifications and Relationships
- Description of Company Organization
- Prime Contractor Experience
- Personnel Experience and Qualifications (including resumes)
- Previous Work Products
- References

### **III. Proposal Format and Required Documents, Continued**

- List of clients that may have financial interest in the appliance, utility, or oil and gas industry, or which have any regulatory involvement with the Commission, if during the past year more than fifteen percent (15%) of your gross receipts for fees and reimbursements came from all the contracts you had with such firms.

#### **Volume 2**

- Cost Summary Letter
- General Requirements
- Total Cost to Complete Project
- Exhibit B-1, Contract Task Budget Summary
- Exhibit B-2, Schedule
- Exhibit B-3, Rates
- Exhibit B-4, Contractor Fee Calculation
- Exhibit B-5, Labor by Task

## **VOLUME 1 – SECTION 1, ADMINISTRATIVE RESPONSE**

### **COVER LETTER**

Each Bidder shall submit a cover letter on company letterhead that includes:

- A reference to: “REQUEST FOR PROPOSAL, No.400-02-401”;
- Summary of the Bidder’s ability to perform the services described in the Work Statement; and,
- Statement that the Bidder is willing to perform those services and enter into a contract with the State.

The cover letter must be signed by a person having the authority to commit the Bidder to a contract. If the Bidder claims a Small Business Preference, a statement to that effect shall also be included in the cover letter.

### **TABLE OF CONTENTS**

Each Proposal must include a Table of Contents, organized in the order cited above and include corresponding page numbers.

### **REQUIRED ADMINISTRATIVE FORMS**

Every Bidder must complete and include the following forms with their proposal:

### **III. Proposal Format and Required Documents, Continued**

- Contractor Status Form, Attachment 1
- Small Business/Disabled Veteran Business Enterprise Application

When claiming a small-business preference, the Bidder may include a copy of the approved certification letter or application for certification. Government Code Section 14835, et seq., requires that a five-percent preference be given to Bidders who qualify as a small business. See Attachment 2.1 for instructions.

- Disabled Veteran Business Enterprise (DVBE) forms in Attachments 2.2-2.4. (Bidders who are government entities are exempt from this requirement).
- Contractor Certification Clauses, Attachment 3

## **VOLUME 1 – SECTION 2, TECHNICAL RESPONSE**

Volume 1, Section 2, shall summarize the Bidder's overall approach in completing the tasks outlined in the Work Statement, highlighting any outstanding features and qualifications relevant to performing the required work including project management

The information in this Section will be used to evaluate your company's approach to the Work Statement. When requested, identify the specific technical staff, the word processing technicians, and the administrative staff who will be directly involved in a contract management task. Exclude anyone whose responsibilities are minimally or indirectly associated with the contract, e.g., the receptionist, the mail room clerk or the security guard.

## **SUMMARY OF APPROACH TO WORK STATEMENT TASKS**

Describe the Bidder's approach to providing services listed in the Work Statement, highlighting any outstanding features, qualifications and experience relevant to performing the duties described in the Work Statement.

## **ADMINISTRATIVE RESOURCES**

Describe in detail the resources available to address the technical and administrative duties outlined in the Work Statement. List specific staff that will be assigned to these tasks and the amount of time that they have available to devote to these duties.

## **TEAM QUALIFICATIONS AND RELATIONSHIPS**

Describe the contractor (organization/company) and each company on your team and clearly list the task area(s) in the Work Statement that each company will provide including subcontractors (DVBEs, if applicable). Each company should emphasize its experience most directly related to work in the Work Statement. Include any history of a working relationship between team members and highlight any relevant success stories.

### **III. Proposal Format and Required Documents, Continued**

Give examples of each company's experience in performing work within the past 48 months in each of the task areas listed in response to the paragraph above. Explain the relevance of this prior work to the Work Statement and the proposed contract.

Describe how your team's expertise will be used to provide the technical support for the work described in this RFP highlighting any special expertise that will be utilized in achieving the project objectives outlined in the Work Statement.

#### **DESCRIPTION OF ORGANIZATION**

Provide an organizational chart that shows the Prime Contractor and the members of the contractor team and the relationships within each firm/company (including subcontractor and DVBE companies). Identify the primary persons responsible for the interface between the Prime Contractor and the Commission, and between each proposed subcontractor and the Prime Contractor. Explain the relationship of each technical staff to the organization of the rest of your company. Describe reliability, continuity, professional awards, location of the Bidder, and subcontractors, including DVBE's.

Include type of organization, composition, functions to be performed by employees of the Bidder, subcontractors or DVBE's and how they pertain to this contract.

Most of the work will involve coordination with the Commission's Sacramento Office. Describe where your company staff and each subcontractor's staff will be headquartered. Describe how you propose to minimize costs to the State while providing technical work under this contract.

#### **PRIME CONTRACTOR EXPERIENCE**

Describe the Prime Contractor's experience as a lead, general or Prime within the past 48 months and explain why your firm is qualified to perform the duties of a Prime Contractor as outlined in Task 1 of the Work Statement.

Identify the individual who will oversee and manage the proposed project. Explain how the project manager has demonstrated capabilities to manage the work proposed, providing at least one example of a similar project managed by that individual.

#### *Timeliness*

Describe your ability to support contract requirements in a timely manner. This includes showing how the Contractor will ensure efficient and timely completion of work tasks. All work-related costs and delays to be incurred by company offices outside of California must be identified. If more than one California office will be involved in any aspect of this contract, those office and staff resources must be identified. If work is to be performed by offices outside of California, explain its impact on administrative and total project cost and timeliness.

### **III. Proposal Format and Required Documents, Continued**

Unless it is clearly demonstrated to have no adverse effect on the cost to the state in terms of efficiency or additional expense, work incurred outside of California will result in a lower score for this category. Also describe the Prime Contractor's experience in developing cost effective methods for handling contract management and subcontractor assignments (i.e., how the task assignment and follow-up processes can be streamlined to allow for more efficient and expeditious handling of all work undertaken through this contract).

#### **PERSONNEL EXPERIENCE AND QUALIFICATIONS**

Describe all technical and professional staff members that will be assigned to this project. Clearly define which personnel will work on each task area outlined in the Work Statement and how all personnel are qualified to perform the proposed work, showing previous relevant work.

Provide the title or classification of each significant personnel member as it applies to this project, and specify his/her roles and functions that will be utilized for this project. Provide resumes for each personnel member who will be working on this project including current job classification, education, professional experience, and areas of responsibility in each member's organization. List the availability of each individual by person hours and percentage of time that person will be assigned to each task.

#### **PREVIOUS WORK PRODUCTS**

Describe and provide at least one example of a similar study that demonstrates successfully completed relevant work by your organization or team that includes:

- Study objectives.
- How the target markets were identified and characterized.
- How messages were developed, tested and refined.
- Marketing strategies and creative approaches.
- How the study was implemented.
- How the effectiveness of the study was evaluated.

#### **REFERENCES**

Bidders must provide a list of at least four (4) clients or employers who have received similar services from the Bidder or the Bidder's personnel or subcontractors, during the last three (3) years by completing Attachment 4, "Customer References." Such services should be of comparable complexity to the services requested in this RFP. Complete one customer reference form for each company.

All references must include the name and telephone number of a contact person with the contacting organization. These individuals, as well as others, may be contacted by the

### **III. Proposal Format and Required Documents, Continued**

Commission when reviewing the submitted proposals. Final evaluations filed with the State on Bidder's past contract performance may be reviewed; therefore, the Bidder may wish to discuss any disagreements he/she has with those evaluations.

#### **CLIENT LIST TO DETERMINE POTENTIAL CONFLICT OF INTEREST**

The proposal must include a listing of your clients which may have any financial interest in the appliance, utility, or oil and gas industry, or which have any regulatory involvement with the Commission, if during the past year more than fifteen percent (15%) of your gross receipts for fees and reimbursements came from all the contracts you had with such firms. If so, state the percentage of your gross receipts and reimbursements, which came from each such firm during the past year.

#### **VOLUME 2—COST**

##### **COST SUMMARY LETTER**

The RFP response shall state the bidder's costs for carrying out the project as outlined during the period of the contract. The costs must be displayed using a cost cover letter on the organization's letterhead.

##### **GENERAL REQUIREMENTS**

The Contractor must submit information on all the Exhibit B Budget forms and will be deemed the equivalent of a formal bid submission under the Public Contract Code. Rates and personnel shown must reflect rates and personnel you would charge if you were chosen as the contractor for this RFP.

The total cost for each task shall include all costs and expenses incurred by the contractor and subcontractors, if any. There will be no additional payments of any kind. In order to show how Bidders calculated task cost, Bidders must provide a detailed budget for each task listed in Exhibits B-1 through B-5 for this project, so the Energy Commission can evaluate reasonableness of task budget. However, the contract will include only the Contract Task Budget Summary, not rates.

The Contractor shall be reimbursed for each task in the work statement in accordance with the provisions of the contract budget. Costs must be incurred within the term of the contract. **When preparing these forms, be sure to take into consideration the length of the project and take into account increases in salaries and wages, general and administrative, overhead, etc.**

**The task budget you bid is part of the final contract, are fixed for the duration of the contract term and may not be changed.**

### **III. Proposal Format and Required Documents, Continued**

#### **A. CONTRACT TASK BUDGET SUMMARY, B-1**

These are the total project costs by task, and will be used in the final contract.

#### **B. SCHEDULE OF DELIVERABLES AND DUE DATES, B-2**

For each task, insert the planned start and completion dates. Programs awarded under this RFP are currently planned to start no earlier than June 30, 2003. Thus, pick a start date of June 30 or later, and fill in the remaining dates, accordingly.

#### **C. CALCULATION OF FRINGE BENEFITS, OVERHEAD, GENERAL ADMINISTRATIVE EXPENSES, AND PROFIT RATES, B-3**

Using Exhibit B-3, provide overhead, G&A and profit rates (%). Different types of overhead (e.g., direct overhead and indirect overhead) may be combined in a single column if they are applied to the same items. Profit cannot exceed 10%. Change the column headings, if appropriate, to match your chart of accounts.

List items you include in each category (Fringe Benefits, Overhead, and G&A).

Show the formulas you use to calculate billable charges for the columns listed in the detailed Budget sheets. The Prime Contractor may not apply profit to subcontractor invoices, nor may subcontractors apply profit to sub-subcontractor invoices.

#### **D. DIRECT LABOR BY TASK, B-4**

In the first column, "Names/Job Classification - Title," list the names of people who will be conducting the work under this Agreement. If the names are not known, then list the job classification or title (e.g., Graduate Student).

Insert the amount of Commission funds budgeted per task for each of the Names/Job Classifications listed.

#### **E. TRAVEL, EQUIPMENT LIST, MATERIALS LIST, AND MISCELLANEOUS EXPENDITURES, B-5**

The Contractor and all Subcontractors must provide details of "Travel," "Equipment," "Materials," and "Miscellaneous," listed in Exhibit B-6. Task numbers must be entered for all items on each table. Include any meetings, and the final meeting. Also include any other trips that you can identify. Any trips not identified here will need prior written approval by the Commission Contract Manager. Along with the purpose, include the destination, person or people taking the trip, and the amount for each trip.

### **III. Proposal Format and Required Documents, Continued**

#### **Equipment**

List equipment that will be purchased partly or in full with Commission funds. Include the name, a description, the purpose and the amount of each piece of equipment. Anything that costs more than \$5,000 and has a useful life of more than 1 year is considered equipment. If possible, funds other than those from the Commission, should be used to purchase equipment. Equipment purchased partly or fully with Commission funds will be listed on a UCC.1 form that will be filled out by a Commission Contracts Office prior to the start of the Agreement.

#### **CONTRACT PAYMENTS**

The Bidder is required to provide, as part of the proposal response, Exhibit B-1 through B-5 specifying the tasks and deliverables upon which payments will be based. The Bidder must describe in the tasks to be performed, the associated deliverables that will be provided, and the cost for each task. The tasks and deliverables must correspond to the Project Tasks and Deliverables required under the Work Statement.

Payment for this contract will be made upon satisfactory completion and submission of a deliverable. In computing the amount of any payment, the Commission Contract Manager shall determine, after receiving an undisputed invoice, what the Contractor has earned during the period for which payment is being made, based on deliverables received and/or satisfactory services rendered. In consideration for the contract work, the Commission may make monthly payments but only on the following conditions:

1. No payment in advance of services rendered, and not more frequently than one payment a month.
2. Receipt of deliverable and a progress report.
3. Approval of the deliverable or progress report by the Commission Contract Manager.

## **IV. Administration**

### **WHAT IS AN RFP?**

The competitive method used for this procurement of services is a Request for Proposal (RFP). A Proposal submitted in response to this RFP will be scored based on the criteria in Exhibit A. Every Technical Proposal must establish in writing the Bidder's ability to perform the RFP tasks listed in the Work Statement. The Commission will contract with the Bidder who met the minimum administrative and technical requirements, and who has the lowest final cost.

### **HOW ARE KEY WORDS DEFINED?**

Important definitions for this RFP are presented below:

<b>Word/Term</b>	<b>Definition</b>
State	State of California
RFP	Request for Proposal, this entire document
Proposal	Formal written response to this document from contractor
DGS	Department of General Services
Commission	California Energy Commission
Bidder	Respondent to this RFP

### **CONTRACTOR DEFINITION**

The Contractor is defined as the firm that receives the contract for specific tasks from the Commission as a result of this RFP and shall be referred to as the "Contractor" in this RFP. The Contractor has primary and legal responsibility for all of the work within the Work Statement, is an expert in all of the management and administration areas, may be an expert in one or more of the task areas, and manages the work of the entire contract team.

### **SUBCONTRACTOR DEFINITION**

A subcontractor is defined as a firm or individual expert or consultant with financial/technical expertise to supplement the Contractor's expertise. The Contractor in conjunction with the subcontractor team is referred to as the contractor team. The Commission reserves the right to use some or all of the subcontractors belonging to the contractor team, and to remove, approve and/or designate additional subcontractors during the contract term.

## **IV. Administrative Requirements, Continued**

### **WHAT IS THE DEADLINE FOR SUBMITTING PROPOSALS?**

All copies of your proposal must be delivered to the Commission Contract Office by May 1, 2003, by **5:00 p.m.** (PDT)

#### **NOTE**

In accordance with Public Contract Code 10344, the Commission will **not** accept late Proposals (delivered after 5:00 p.m.). There are no exceptions to this law.

### **HOW DO I DELIVER MY PROPOSAL?**

A Bidder may deliver a Proposal by:

- U. S. Mail;
- In person; or
- Messenger service.

All Proposals must be **delivered** to the Commission's Contracts Office by 5:00 p.m. on May 1, 2003. If a Bidder chooses either of the last two methods, delivery of all copies prior to 5:00 p.m. on May 1, 2003, must be made during normal business hours of 8:00 a.m. – 5:00 p.m., Monday through Friday. E-mail and facsimile (FAX) transmissions **WILL NOT** be accepted in whole or in part under any circumstances.

### **WHERE DO I DELIVER MY PROPOSAL?**

California Energy Commission  
1516 Ninth Street, 1<sup>st</sup> Floor  
Contracts Office, MS-18  
Sacramento, California 95814

### **HOW MANY COPIES DO I SUBMIT?**

Mail or deliver an **original Proposal and four (4) copies** to the address given above. The Bidder must submit the technical and cost proposals in two separately sealed envelopes labeled Volume 1, Technical Proposal and Volume 2, Cost for Request for Proposal #400-02-401.

### **ARE THERE IMPORTANT ADMINISTRATIVE DETAILS I SHOULD KNOW?**

#### Disabled Veteran Enterprises

This contract is subject to a participation goal of three percent (3%) for certified California Disabled Veteran Business Enterprises (DVBE) as set forth in Public Contract Code (PCC)

## IV. Administrative Requirements, Continued

Sections 10115, et seq. See Attachments 2.1-2.4. Bidders must provide DVBE qualifications, experience and duties to be performed under the work statement. For each DVBE program participant, Bidders shall provide information requested in, and format required in Section IV.

A Short Explanation of the DVBE Process – If you are a non-governmental entity, you must have either three-percent DVBE participation, *or* you must demonstrate a good faith effort to obtain DVBE participation. It is important that you thoroughly read the instructions provided with each DVBE form. The DVBE compliance process is as follows:

- ✓ *If you are proposing to meet the three-percent participation goals, complete and submit Attachment 2.2, Attachment 2.3, and a copy(ies) of the DVBE certification letter(s) from the Office of Small Business Certification and Resources (OSBCR).*
- ✓ *If you are proposing to partially meet the participation goals, complete and submit Attachment 2.2, Attachment 2.3, and attach a copy(ies) of the DVBE certification letter(s) from OSBCR, as well as Attachment 2.4 to demonstrate the good faith effort you performed to meet full participation. Your good faith effort must include advertising, which is explained on the reverse of Attachment 2.4.*
- ✓ *If you have no DVBE participation in your proposal, you must complete and submit Attachment 2.4 to demonstrate the good faith effort you performed in your attempt to meet participation. Your good faith effort must include advertising, which is explained on the reverse of Attachment 2.4.*
- ✓ *If you or a subcontractor has applied for DVBE certification, complete the appropriate Attachments as explained above, and include a copy of the application.*

### Small Business Preference

Government Code Sections 14835, et seq., requires that a five percent (5%) cost preference be given to any Bidder who is certified by the State of California as a small business for the purpose of evaluating cost bids. A Bidder who claims this preference may include a copy of its approved certification form in the Bidder's proposal.

### Bidders' Cost

The Bidder is responsible for the cost of developing a proposal, and this cost cannot be charged to the State.

### Drug-Free Workplace

The successful Bidder(s), by signing the final contract, certifies compliance with California Government Code Section 8350 et seq., which relates to providing a drug-free workplace.

### Americans With Disabilities Act

The successful Bidder(s), by signing the final contract, certifies compliance with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

## **IV. Administrative Requirements, Continued**

### Recycled Paper and Products

The successful Bidder(s) shall certify in writing the minimum, if not exact, percentage of recycled content of paper used in the performance of the contract, regardless of whether the product meets the required recycled product percentage defined in PCC Section 12161 and 12200. The successful Bidder(s) may certify that the product contains zero recycled content. (PCC § 10308.5).

## **HOW DO I RESPOND TO THIS RFP?**

Responses to this solicitation will be in the form of a Technical and Cost Proposal according to the format described in Section III. The Technical Proposal shall document the Bidder's experience, qualifications, project organization and approach to perform the tasks described in the Work Statement found in Section II, and the Cost Proposal shall detail the Bidder's budget to perform such tasks.

## **CAN THE COMMISSION CANCEL THIS RFP?**

Yes, if it is in the State's best interest, the Commission reserves the right to do any of the following:

- Cancel this RFP;
- Amend this RFP as needed; or
- Reject any or all Proposals received in response to this RFP

## **CAN THE COMMISSION AMEND THIS RFP?**

If the RFP must be amended, the Commission will mail a formal written addendum to all parties who requested the RFP and will also post it on the Commission's Web Site [www.energy.ca.gov/contracts](http://www.energy.ca.gov/contracts) and Department of General Services' Web Site [www.dgs.ca.gov/cscr](http://www.dgs.ca.gov/cscr).

### Errors

If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the Bidder shall immediately notify the Commission of such error in writing and request modification or clarification of the document. Clarifications will be given by written notice of all parties who requested the RFP, without divulging the source of the request for clarification. The Commission shall not be responsible for failure to correct errors.

## **WHAT ARE THE CONTRACT REQUIREMENTS?**

### Term of the Contract

The term of the contract will be June 30, 2003 to March 31, 2005.

## **IV. Administrative Requirements, Continued**

### RFP in Final Contract

The content of this RFP shall be incorporated by reference into the final contract.

### Contract Cancellation

The Commission reserves the right to terminate any contract awarded through this RFP by providing 30-days notice to the successful Bidder.

### No Contract Until Signed & Approved

No agreement between the Commission and the successful Bidder is in effect until the contract is signed by the Contractor, approved at a Commission Business Meeting, and approved by the Department of General Services.

### Contract Amendment

The contract executed as a result of this RFP will be able to be amended by mutual consent of the Commission and the Contractor. The Commission has the option to amend the contract as a result of project review, changes and additions, changes in project scope, an extension in time, or time and money, or availability of funding, consistent with the terms of the original contract.

### Audit

The Bureau of State Audits may audit a contract awarded under this RFP for a period of three years after the final payment or termination of the contract.

### Conflicts of Interest

Although a Bidder will not be automatically disqualified by reason of work performed, or for financial interests in the firms who may be affected by action of the Commission, we reserve the right to consider the nature, extent, and recency of such work. By reason of the foregoing, the Commission reserves the right to reject any or all proposals that present a true or apparent conflict of interest.

The proposal must include a listing of your clients which may have any financial interest in the appliance, utility, or oil and gas industry, or which have any regulatory involvement with the Commission, if during the past year more than fifteen percent (15%) of your gross receipts for fees and reimbursements came from all the contracts you had with such firms. If so, state the percentage of your gross receipts and reimbursements, which came from each such firm during the past year.

### Statement of Economic Interests

Contractor shall submit to the Commission Contract Manager a completed Fair Political Practices Commission Form 700, "Statement of Economic Interests" for each consultant as directed by the Commission's Chief Counsel's Office to file a statement.

## **IV. Administrative Requirements, Continued**

### **WHAT IF I DECIDE TO MODIFY OR WITHDRAW MY PROPOSAL?**

A Bidder may, by letter to the Contact Person, withdraw or modify a submitted Proposal before May 1, 2003, at 5:00 p.m. Proposals cannot be changed after that date and time. A Bidder cannot withdraw after the due date for proposals without the concurrence of the Commission. A bid cannot be “timed” to expire on a specific date. For example, a statement such as the following is nonresponsive to the RFP: “This proposal and the cost estimate are valid for 60 days.”

### **CAN I USE SUB-CONTRACTORS?**

Yes. Any subcontractors the Bidder chooses to use in fulfilling the requirements of this RFP, that are expected to receive more than ten percent (10%) of the value of the contract, must also meet all administrative and technical requirements of this RFP. The Bidder must provide a summary of each subcontractor’s qualifications, including DVBE firms, experience and duties that would be performed under the Work Statement.

Also, for all DVBE firms regardless of the amount they receive, the Bidder must provide a summary of the DVBE’s qualifications, experience and duties that would be performed under the Work Statement. The summary shall contain the information requested in, and format required by, Section III. DVBE cost information must also be included in the Cost Proposal.

The Contractor is responsible for the quality of all subcontractor work, and may only replace subcontractors as specified under the terms of the contract.

### **CAN MY PROPOSAL CONTAIN CONFIDENTIAL INFORMATION?**

No. The Commission will not accept or retain any proposals that are marked confidential in part or in their entirety. Such proposals will be destroyed and will not be evaluated.

### **HOW DO I KNOW IF I’VE BEEN AWARDED A CONTRACT?**

Subsequent to the Proposal evaluations, the Commission will post a “Notice of Proposed Award” at the Commission’s headquarters in Sacramento, and on the Commission’s Web Site, on or about May 14, 2003, after 12:00 noon at:

California Energy Commission  
Contracts Office  
1516 Ninth Street, MS-18  
Sacramento, CA 95814

## **IV. Administrative Requirements, Continued**

### **WHAT HAPPENS TO MY DOCUMENTS?**

On the Notice of Proposed Award date all proposals and related material, with the exception of work examples, submitted in response to this RFP become a part of the public record and are available for public disclosure. Bidders who want any work examples they submitted with their proposals returned to them shall provide either sufficient postage, or a U.P.S. or Courier Charge Code. If adequate postage or a charge code is not provided for as mentioned above the documents will be destroyed.

### **COMMISSION ISSUED RFP**

The California Energy Commission has issued this RFP on behalf of the State of California. The Commission is the sole point of contact concerning this RFP. The Contact Person for questions is:

ELIZABETH STONE, CONTRACT OFFICER

Telephone: (916) 654-5125

FAX: (916) 654-4423

### **WHEN IS THE DEADLINE FOR QUESTIONS ABOUT THIS RFP?**

Potential Bidders may ask questions about the requirements of this RFP. Bidders must prepare their questions in writing and send or FAX them to the Contact Person. Questions will be answered in writing and distributed to recipients of the RFP. **The deadline for written or oral questions is March 25, 2003.**

### **NONDISCRIMINATION CERTIFICATION**

Any bid, proposal, or offer for a contract which is submitted by a contractor who has been decertified from contracting with the State by the Department of Fair Employment and Housing (DFEH), shall be deemed to be nonresponsive. Refer to the California Notice Register for a list of decertified contractors. (Published by the Office of Administrative Law and available through the Office of State Printing).

### **BIDDERS' ADMONISHMENT**

This RFP contains the instructions governing the requirements for a firm quotation to be submitted by interested Bidders, the format in which the technical information is to be submitted, the material to be included, the requirements which must be met to be eligible for consideration, and Bidder responsibilities. Bidders must take the responsibility to carefully read the entire RFP, ask appropriate questions in a timely manner, submit all required responses in a complete manner by the required date and time, make sure that all procedures and requirements of the RFP

## **IV. Administrative Requirements, Continued**

are followed and appropriately addressed, and carefully reread the entire RFP before submitting a proposal.

### **ON WHAT GROUNDS WOULD MY PROPOSAL BE REJECTED?**

A Proposal shall be rejected if:

- It is received after the exact time and date set for receipt of Proposal's pursuant to Public Contract Code, Section 10344.
- It is considered nonresponsive to the California Disabled Veteran Business Enterprise participation requirements.
- It is lacking a properly executed Certification Clauses, Attachment 3.
- It contains false or intentionally misleading statements or references which do not support an attribute or condition contended by the Bidder.
- The Proposal is intended to erroneously and fallaciously mislead the State in its evaluation of the Proposal and the attribute, condition, or capability is a requirement of this RFP.
- There is a conflict of interest as contained in Public Contract Code Sections 10410, 10411 and/or 10365.5.
- If any portion of the proposal (technical or cost) is marked or stamped as "Confidential".
- It is not prepared in the mandatory format described.
- Exhibit B, Cost Forms are not provided.

A Proposal may be rejected if:

- It is unsigned.
- The firm or individual has submitted multiple proposals for each task.
- It does not literally comply or contains caveats that conflict with the RFP and the variation or deviation is not material, or it is otherwise nonresponsive.
- The Commission may waive any immaterial defect or deviation contained in a Bidder's proposal. The Commission's waiver shall in no way modify the proposal or excuse the successful Bidder from full compliance.

### **WHAT ARE THE PROTEST PROCEDURES?**

A Bidder may file a protest against the proposed awarding of a contract. Once a protest has been filed, contracts will not be awarded until either the protest is withdrawn, or the Commission cancels the RFP, or the Department of General Services decides the matter.

Please note the following:

- Protests are limited to the grounds contained in the California Public Contract Code Section 10378.

#### **IV. Administrative Requirements, Continued**

- During the five working days that the Notice of Proposed Award (NOPA) is posted, protests must be filed with the DGS Legal Office and the Commission Contracts Office.
- Within five days after filing the protest, the protesting Bidder must file with the DGS and the Commission Contracts Office a full and complete written statement specifying the grounds for the protest.
- If the protest is not withdrawn or the RFP is not canceled, DGS will decide the matter. There may be a formal hearing conducted by a DGS hearing officer or there may be briefs prepared by the Bidder and the Commission for the DGS hearing officer consideration.

## V. Evaluation

### ABOUT THIS SECTION

This section explains how the proposals will be evaluated. It describes the evaluation stages, preference points, and scoring of all proposals. A Bidder's proposal will be evaluated and scored based on its response to information requested in Sections II and III.

During the evaluation and selection process, the Commission may interview a Bidder for the purpose of clarification and verification of information provided in the proposal.

### HOW WILL MY PROPOSAL BE EVALUATED?

To analyze all Proposals, the Commission will organize an Evaluation Committee whose members have expertise in evaluating consulting services. The Proposals will be analyzed in three stages:

#### Stage One: Fulfillment of RFP Mandatory Format

The Contracts Office will first identify those Bidders whose Proposals adhere to the required format outlined in Section III; Bidders who do not follow the required format or submit the required forms will be disqualified and eliminated from the competition.

#### Stage Two: Evaluation of Proposals

The Evaluation Committee will then evaluate and score all remaining Proposals based on the Evaluation Criteria Worksheet, Exhibit A. The Committee may, at its discretion, seek clarification of any point in the written technical proposal through a conference call with the affected Bidder. Proposals not attaining a score of 75 percent of the total possible points in each section will be eliminated from further competition. After the technical evaluation, those Bidders who pass the minimum required technical score of 750 points (75%) may be scheduled for an interview by the Committee. **Those Bidders not meeting the minimum technical score of 750 points will not be interviewed.**

#### Stage Three: Cost Proposal

Those proposals that pass the minimum technical points will have their cost proposal opened. The Small Business Preference will be applied, if applicable.

The contract will be awarded to the Bidder who met the minimum technical and administrative requirements and who has the lowest Final Cost when the Small Business preference (if applicable) is applied.

## **V. Evaluation Criteria, Continued**

### **DO SMALL BUSINESSES GET EXTRA POINTS?**

Yes. Each Bidder who is a State certified small business will receive a cost preference of five percent of the lowest cost or price offered by the lowest responsible Bidder who is not a certified small business, by deducting this five percent from the small business bidder's cost, for the purpose of comparing cost proposals of all bidders.

### **HOW WILL MY PROPOSAL BE SCORED?**

The Evaluation Committee will award points based on the following considerations. The point calculations reflect the averages of the combined scores of all Evaluation Committee members.

#### Fail (0 points)

Zero points are awarded for responses considered to be unacceptable, such as:

- Is not in substantial accord with the RFP requirements;
- Has a potential significant effect on the amount paid or net cost to the State or the quality or quantity of product and/or service;
- Provides an advantage to one competitor over the other competitors, for example, not paying minimum wages.

#### Minimally Acceptable (1-3 points) Below average response, such as:

- The proposal states a requirement, but offers no explanation of how or what will be accomplished;
- The response contains a technical deficiency which is an inaccurate statement or reference concerning the how, what, where, or when, which is part of an overall statement or description.

#### Meets Minimum Requirements (4-6 points) Average response, such as:

- Satisfies the minimum requirements and describes generally how and/or what will be accomplished.

## **V. Evaluation Criteria, Continued**

Exceeds Minimum Requirements (7-9 points) Above average response, such as:

- Satisfies the minimum requirements and specifically describes how and/or what will be accomplished in an exemplary manner, using sample products and illustrative materials (i.e., diagrams, charts, graphs, etc.).

Exceptional (10 points) Superior response, such as:

Exceeds the minimum requirements and specifically describes how and/or what will be accomplished both quantitatively and qualitatively, using sample products and illustrative materials (i.e., diagrams, charts, graphs, etc.).

## **CRITERIA AND POINTS**

The Evaluation Committee will review and evaluate the Proposals and interviews based on the Evaluation Criteria Worksheet. See Exhibit A.

**EXHIBIT A****EVALUATION CRITERIA WORKSHEET**

FIRM \_\_\_\_\_ BY \_\_\_\_\_

Criterion	Weight Factor	Points (1-10)	Weighted Points
1. Organizational Suitability a. Appropriate level of effort and staffing by task. b. Appropriate organization, administrative and support structure to implement the project.	12		
2. Personnel Experience and Qualifications a. Experience of survey team. b. Experience with stated preference contingent valuation surveys. c. Familiarity with appliance issues, including potential market niches. d. Familiarity with appliance industry.	38		
3. Approach and Methodology a. Approach to survey sampling and design. b. Methodology of survey.	35		
4. Quality of the Proposal Submitted a. Clarity. b. Comprehensiveness c. Overall Quality	15		
<b>TOTAL SCORE</b> Minimum points required to pass Maximum points available	 750 1000		

**Exhibit B-1**  
**Contract Task Budget Summary**

<b>Task Number</b>	<b>Task Name</b>	<b>Task Deliverables</b>	<b>Cost \$</b>	
1.A	Initial Report	Initial Report		
1.B	Monthly Reports	Monthly Reports		
1.C	First Annual Report	First Annual Report		
1.D	Second Annual Report	Second Annual Report		
1.E	Final Report	Final Report		
2.A	Survey of Group A Appliances	Commercial refrigerators and freezers		
2.B	Survey of Group B Appliances	Refrigerating canned and bottled beverage vending machines		
2.C	Survey of Group C Appliances	Infrared gas space heaters (excluding patio heaters)		
2.D	Survey of Group D Appliances	Commercial clothes washers		
2.E	Survey of Group E Appliances	Food service equipment and patio heaters		
2.F	Survey of Group F Appliances	Ballasts designed for use with T5 or T8 fluorescent lamps		
2.G	Survey of Group G Appliances	Heat pump water heaters, hot water dispensers, and mini-tank electric water heaters		
2.H	Survey of Group H Appliances	Tub spout diverters		
2.I	Survey of Group A Appliances	Traffic signals, exit signs and luminaries		
2.J	Survey of Group B Appliances	Transformers		
2.K	Survey of Group C Appliances	Spot air conditioners, ground source heat pumps, ground water source heat pumps, gas air conditioners, and computer room air conditioners		
2.L	Survey of Group D Appliances	Non-packaged boilers		
2.M	Survey of Group E Appliances	Small gas furnaces designed for use with a three phase electrical supply		

**Exhibit B-2**  
**Schedule of Deliverables and Due Dates**

Insert Name of Company or Organization						
Task Number	Task Name	Deliverable(s)	Planned Start Date	Planned Completion Date		
1.A	Initial Report	Initial Report				
1.B	Monthly Reports	Monthly Reports				
1.C	First Annual Report	First Annual Report				
1.D	Second Annual Report	Second Annual Report				
1.E	Final Report	Final Report				
2.A	Survey of Group A Appliances	Commercial refrigerators and freezers				
2.B	Survey of Group B Appliances	Refrigerating canned and bottled beverage vending machines				
2.C	Survey of Group C Appliances	Infrared gas space heaters (excluding patio heaters)				
2.D	Survey of Group D Appliances	Commercial clothes washers				
2.E	Survey of Group E Appliances	Food service equipment and patio heaters				
2.F	Survey of Group F Appliances	Ballasts designed for use with T5 or T8 fluorescent lamps				
2.G	Survey of Group G Appliances	Heat pump water heaters, hot water dispensers, and mini-tank electric water heaters				
2.H	Survey of Group H Appliances	Tub spout diverters				
2.I	Survey of Group A Appliances	Traffic signals, exit signs and luminaries				
2.J	Survey of Group B Appliances	Transformers				
2.K	Survey of Group C Appliances	Spot air conditioners, ground source heat pumps, ground water source heat pumps, gas air conditioners, and computer room air conditioners				
2.L	Survey of Group D Appliances	Non-packaged boilers				
2.M	Survey of Group E Appliances	Small gas furnaces designed for use with a three phase electrical supply				

## Exhibit B-3

### Contractor's Calculation of Fringe Benefits, Overhead, General Administrative Expenses, and Profit Rates\*

Insert Name of Company or Organization

Rates (percentages) for time intervals from the start of the project through 2007.				Fringe Benefits (FB)	Overhead (OH)	General & Administrative (GA)	Profit (P) (10% Max)
From:		To:		%	%	%	%
From:		To:		%	%	%	%
From:		To:		%	%	%	%
From:		To:		%	%	%	%
From:		To:		%	%	%	%
From:		To:		%	%	%	%

	Fringe Benefits	Overhead (Direct & Indirect)	General & Administrative
List <b>items</b> you include in each category (Fringe Benefits, Overhead, and G&A) Some examples include: vacation, retirement plan, telephone, secretarial, rent/lease, insurance, etc.			

Expense Items in the Budget Spreadsheets	Provide Formulas for Calculating Fully-Burdened Invoicing ** example only: $DL \times (1 + OH + GA + P)$	Show the Total %
Direct labor (DL)		
Fringe benefits (FB)		
Travel (TR)		
Equipment (EQ)		
Materials (MAT)		
Miscellaneous (MIS)		
Subcontractors (SUB) ***		

**\*When preparing the Exhibit B budget forms, list your rates (hourly rates, directs and indirects, etc.) for the entire term of the Agreement. Projected rates are acceptable and expected, average rates are not acceptable.**

\*\* Provide additional formulas for each expense item if they will change over the duration of the project.

\*\*\* Prime Contractor profit not allowed on Subcontractor invoices.

**Exhibit B-4**  
**Labor By Task**

[illegible]

**Exhibit B-4**  
**Labor By Task**

[illegible]

## Exhibit B-5

### Travel, Equipment List, Materials List, and Miscellaneous Expenditures

Pre-approved Travel List				
Task No.	Trip Purpose	Destination	Who	Amount

Equipment				
Task No.	Name of Equip.	Description	Purpose	Amount
1.3	Shipping			

## Exhibit B-5

### Travel, Equipment List, Materials List, and Miscellaneous Expenditures

Material(s)		
Task No.	Descriptions of Material(s)	Amount

Miscellaneous Expenditures		
Task No.	Descriptions of Expenditures	Amount

# ATTACHMENT 1

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION  
Contracts Office

## CONTRACTOR STATUS FORM

Rev 3/03

Contractor's Name \_\_\_\_\_

County \_\_\_\_\_

Address \_\_\_\_\_

Federal Employer

# \_\_\_\_\_

Phone

# \_\_\_\_\_

FAX

# \_\_\_\_\_

### STATUS OF CONTRACTOR PROPOSING TO DO BUSINESS:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Individual (Sole | <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> General Partnership |
| <input type="checkbox"/> Corporation      | <input type="checkbox"/> Limited Liability   | <input type="checkbox"/> Other               |

### INDIVIDUAL

If a sole proprietorship, state the true name of sole

### PARTNERSHIP

If a partnership, list each partner, including limited partners, stating their true name and their interest in the partnership:

### CORPORATION

If a corporation, place and date of

Date corporation was authorized by Sect. of

President: \_\_\_\_\_

Vice \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Agent for service of process and address if different from  
above: \_\_\_\_\_

### LIMITED LIABILITY COMPANY

If a Limited Liability Company, date LLC was authorized by the Secretary of

Name(s) of manager(s) \_\_\_\_\_

Agent for service of process and address if different from  
above: \_\_\_\_\_

### SMALL BUSINESS PREFERENCE

Are you claiming preference as a small business?

- ☐ YES – Attach approval letter from Office of Small and Minority Business.  
☐ NO

Date you filed for small business \_\_\_\_\_

Your small business ID \_\_\_\_\_

### OTHER

Explain: \_\_\_\_\_

**NOTE: This form must be completed or your proposal may be rejected.**

## **ATTACHMENT 2.1**

### **SMALL BUSINESS AND DVBE CERTIFICATION INSTRUCTIONS, AND F.A.Q.'S**

Please Read These Instructions Carefully

Public Contract Code Section 10115 et seq. Establishes a contract participation goal of at least three percent (3%) for disabled veteran business enterprise (DVBE). This goal applies to a state agency's overall contracting program. State agencies have the discretion to apply the DVBE participation goal to individual contracts. DVBE participation requirements are included for this RFP. This solicitation attachment provides program information and bidder responsibilities for the DVBE Participation Program. Bidders must meet DVBE Participation Program requirements to be viewed as a responsive bidder and considered for contract award. Failure to submit a complete response may result in a non-responsive determination, in which case the Proposal will be rejected.

For Proposal response assistance, please contact the contracting official below:

Elizabeth Stone  
California Energy Commission  
1516 9<sup>th</sup> Street, MS-18  
Sacramento, CA 95814  
(916) 654-5125  
(916) 654-4423 (fax)  
estone@energy.state.ca.us

The Office of Small Business and DVBE Certification (OSDC) offers program information and may be reached at:

Department of General Services  
Office of Small Business and DVBE Certification  
707 3<sup>rd</sup> Street, 1<sup>st</sup> Floor, Room 400  
West Sacramento, CA 95605  
Homepage: <http://www.dgs.ca.gov/osbcr>  
Receptionist: (916) 375-4940 or (800) 559-5529  
24-Hour Recording and Mail Request, call (916) 322-5060  
Fax: (916) 375-4050

### **DVBE PARTICIPATION PROGRAM COMPLIANCE OPTIONS**

Before you begin to prepare your proposal response, you will need to determine which option you will use and document to meet DVBE Participation Program requirements.

See page 20 of this RFP for information on the correct forms to fill out for DVBE compliance, or instructions for making a Good Faith Effort.

The OSCD address and phone for Small Business Preference and DVBE information is:

Department Of General Services  
Office of Small Business and DVBE Certification

### Small Business Certification

In order to receive Small Business Preference, Bidder must either be certified by the State Department of General Services, Office of Small Business and DVBE Certification (OSDC) as a small business, or be self-certified pursuant to the Federal Government.

### DVBE Certification

- Each DVBE firm listed on Attachment 2.3 must be formally certified as a DVBE by OSDC. The DVBE program is not a self-certification program. DVBE certification must be approved by OSDC by the notice of award date of the contract to be counted in meeting participation goals.
- A copy of the certification letter approved by, or a copy of the certification form submitted to OSDC must be included in the proposal package.

To qualify as a DVBE, the DVBE must:

- 1) Be a California resident;
- 2) Own 51% of the firm and meet the requirements: in 3) and 4) below.
- 3) Provide to the OSDC, by no later than 5:00 p.m. on the date on which the proposal is due, an Award of Entitlement from the United States Department of Veterans Affairs or the United States Department of Defense, issued within 6 months of the date on which certification is sought, which would certify or declare the existence of a service-connected disability, of at least 10 percent, at the time of application for or renewal of certification as a DVBE, and
- 4) Meet all requirements set forth in Article 6 (commencing with Section 999) of Chapter 6, Division 4 of the California Military code.

The Internet addresses are:

**OSDC Homepage: <http://www.pd.dgs.ca.gov/DVBE>**

This internet site provides general information about the DVBE program and certification process.

**DVBE list: <http://www.pd.dgs.ca.gov/resource.pdf>**

OSDC maintains a list of certified DVBEs. The list is separated into three main subject areas: Commodities, Construction, and Services. Within each subject area, there are more specific areas of expertise. The Energy Commission does not have separate DVBE lists.

### **ANSWERS TO FREQUENTLY ASKED QUESTIONS**

The following questions are among the most frequently asked regarding DVBE requirements:

Q: If I am awarded the contract, either with partial or full goal attainment documented, am I required to use the subcontractor/supplier proposed in my proposal?

A: Yes, unless you have requested and received substitution approval from the Commission. Written requests should include:

- The person's or firm's NAME to be substituted,
- The substitution reason,
- The reason a non-DVBE subcontractor is proposed, if applicable,
- Describe the business to be substituted including its business status as a sole proprietorship, partnership, corporation or other entity, and
- The certification status of the firm, if any.

See California Code of Regulations Section 1896.64 © & (d) for substitution criteria.

The request and the Commission's approval or disapproval is not construed as an excuse for noncompliance with any other provision of the law, including but not limited to the Subletting and Subcontracting Fair Practices Act or any other contract requirements relating to substitution of subcontractors. Failure to adhere to at least the DVBE participation proposed by the successful contractor may be cause for contract termination and recovery of damages under the rights and remedies due the State for default section of the contract(s) and any other penalties provided for by statute.

Q: Who notifies the subcontractor when an award is made?

A: Upon award to a prime contractor, the Commission notifies listed subcontractors of their contract participation. Primes are encouraged to notify their listed subcontractors immediately after an award is made to formalize their business agreements.

Q: What happens to proposals considered non-responsive to the DVBE Participation Program requirements?

A: Non-responsive proposals are rejected. Many are rejected because of:

- Incomplete documentation
- Documentation not received by bid due date
- Mathematical error related to the percentages
- Basing goal attainment on workforce composition

Q: If I am a disabled veteran business enterprise, can I meet the 3% contract goal as a single company?

A: Yes

Q: If my submitted proposal meets the contract goal and the Commission decides to make multiple awards to the contract, could my proposal be considered non-responsive?

A: No, the Commission's decision to make multiple awards will not jeopardize proposal compliance.

ATTACHMENT 2.2

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION  
Contracts Office

**PRIME BIDDER'S CERTIFICATION OF  
DISABLED VETERAN-OWNED BUSINESS PARTICIPATION**

*See Instructions on Reverse*

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I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representations made herein and, to the best of my knowledge and belief, each firm set forth in this bid as a disabled veteran business enterprise complies with the relevant definition set forth in Section 1896.62(d) of Title 2, California Code of Regulations hereof.

In making this certification, I am aware of Section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims against the State, and Section 10115.10 of the Public Contract Code making it a crime for intentionally making an untrue statement in this certificate.

COMPANY NAME/BIDDER (Please type or print)	RFP #
BIDDER'S SIGNATURE	DATE SIGNED
PRINTED NAME OF PERSON SIGNING	TITLE OF PERSON SIGNING (Business Owner/Chief Executive Officer)

NOTE: *If DVBE participation is proposed, this form must be completed and signed by the bidder or the proposal will be rejected.*

Bidder's Certification of DVBE Participation - Attachment 2.2

**If the bidder is proposing to meet the DBVE participation goal**, the bidder must sign a certification that each firm listed on Attachment 2.3 meets the legal definition of DVBE and the bidder is aware of the penalties for fraud.

- Company Name - legal company name of prime bidder.
- Bidder's Signature - person authorized (CEO) to sign.
- Printed Name - printed name of person who signed.
- Title - title of person signing - Business Owner, Chief Executive Officer, Manager.

Only the company (bidder) submitting the proposal must sign this certification.

**ATTACHMENT 2.3  
RFP 400-02-401**

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION  
Contracts Office

**LIST OF DISABLED VETERAN OWNED BUSINESS PARTICIPATION**

(1) Company Name	(2) Nature of Work	(3) Contracting With	(4) TIER	(5) Claimed 2) DVBE Value %	(6) Certification Letter from OSDC Attached
TOTAL				%	

**NOTE:** *If proposing participation goals, this form must be completed or your proposal will be rejected. See instructions on reverse of this form of the RFP.*

ATTACHMENT 2.3  
RFP # 400-02-401

DVBE Participation List – Attachment 2.3

**If the participation goals are partially or fully met**, Attachment 2.3 must be completed detailing the type of work, the companies (subcontractors and vendors) proposed for DVBE participation, and all other related information.

Col. 1 - DVBE company name - each DVBE company must be certified by or have submitted Attachment 4 (application for DVBE certification) to OSCD by the proposal due date.

Col. 2 - Nature of Work - Type of Expertise, Technology, Service, Supplier, etc.

Col. 3 - Contracting with - Company name that the DVBE company is contracting with. For example, the bidder may be contracting with a company (XYZ, Inc.) who deals with a DVBE. Then XYZ, Inc. would be entered in Column 3.

Col. 4 - Tier - Contracting tier according to the following:

- 0 = Bidder;
- 1 = Primary subcontractor/supplier;
- 2 = Subcontractor/supplier of Level 1 subcontractor/ supplier;
- 3 = Subcontractor/supplier of Level 2 subcontractor/ supplier.

Col. 5 - Claimed DVBE, % value.

Percent of contract dollars committed to the DVBE listed. This percentage is the amount that will be paid to each DVBE company/vendor from the contract funds.

NOTE: This percentage is not the ownership of the company.

Col. 6 - Certification Letter attached.

This column is a checkpoint for you to ensure that all of the DVBE certification letters are in your proposal. If a certification letter is omitted, that DVBE company cannot be counted towards meeting the goals.

**DVBE certification** approval letter or a copy of the DVBE Application must be included in the proposal. DVBEs must be certified by the time of contract award in order to count in the participation goals.

You must clearly identify in the Work Statement, Tasks & Budget what services will be provided and the costs related to each DVBE.

## ATTACHMENT 2.4

**RFP 400-02-401**

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION  
Contracts Office

### DOCUMENTATION OF GOOD FAITH EFFORTS

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#### Section 1. ORGANIZATION CONTACTS

List below the contacts made in an effort to identify potential DVBEs for participation in this contract. Include dates, times (if known), contact names and phone numbers.

Agency	Name	Phone	Date/Time
A. CA Energy Commission		(916) 654-4392	
B. Other State Agencies			
C. DVBE Organizations			

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#### Section 2. ADVERTISING

List the trade papers and DVBE focused papers in which you advertised for participation in this contract. Include the dates of advertisement.

Trade	Ad Date	Publication Name	Copy Attached

**NOTE:** *If your proposal does not meet the 3% disabled veteran participation goal, this form must be completed to meet "Good Faith Efforts." These are the minimum requirements, therefore failure to fully complete each section of this form will result in rejection of the proposal as nonresponsive.*

### Attachment 2.4 (Continued)

### Section 3. DVBEs CONSIDERED

- A. Attach Solicitation Sample or Phone Conversation.
- B. List DVBEs that you contacted for participation in this contract along with the dates you sent the solicitations or called them.
- C. List DVBEs that you considered for participation in this contract and state the reasons the DVBEs were not selected.

[illegible]

**NOTE:** *If your proposal does not meet the 3% disabled veteran participation goal, this form must be completed to meet "Good Faith Efforts." These are the minimum requirements. Failure to complete each section of this form will result in rejection of the proposal as nonresponsive.*

**ATTACHMENT 2.4 (CONTINUED)**  
**INSTRUCTIONS FOR ATTACHMENT 2.4**  
**DOCUMENTATION OF GOOD FAITH EFFORTS**

**If a bidder's proposal does not meet the participation goals**, then the bidder must document its "good faith effort" to meet the participation goals. The minimum requirements for meeting good faith documentation under the law are CONTAINED in Attachment 2.4, therefore each item in Attachment 2.4 must be accomplished and documented. (Public Contract Code Part 10115.2) **IF THE PROPOSAL DOES NOT MEET THE 3% DVBE PARTICIPATION THEN, FAILURE TO PERFORM, COMPLETE AND SUBMIT ATTACHMENT 2.4 WILL BE CAUSE FOR REJECTION OF THE FINAL PROPOSAL AS NONRESPONSIVE TO THE GOOD FAITH EFFORTS REQUIREMENT.**

Information is available at:

DGS-DVBE Resources Packet – [www.pd.dgs.ca.gov/resource.pdf](http://www.pd.dgs.ca.gov/resource.pdf) – 916-375-4940, or 800-559-5529  
California Energy Commission DVBE handbook – 916-654-4392

Part 1 - ORGANIZATION CONTACTS

List each contact by date, time, name, and phone number. Each bidder is required at a minimum to undertake steps A, B, C, and D, and to document all efforts under each step. [Public Contract Code Part 10115.2 (b)]. *The purpose of making each of these contacts is to obtain the resources/contact groups who can refer you to or provide you with lists of DVBEs.*

*The DVBE list available from DGS consists of commodities and services (including consultant services).*

Part 2 - ADVERTISING

Advertising is required as part of the good faith effort documentation.

- Advertising must be made in at least two publications: one trade (e.g., work being performed in the project and reimbursed by the Commission) and one DVBE focused.
- Both advertisements must appear not less than 14 calendar days prior to bid proposal submittal date, to allow reasonable time for consideration of DVBEs.
- The advertisements for DVBE (including names of publications, dates of advertisement and copies of advertisements) must be documented in the bidder's proposal.

NOTE: *General circulation newspapers such as the Los Angeles Times or the Sacramento Bee are not acceptable, since neither one qualifies as a trade or focus publication.*

Part 3 - DVBE'S RESPONDING AND CONSIDERED

List and identify each DVBE that was contacted and state the reason why they were not selected. DVBE businesses considered must have appropriate qualifications for the work to be performed in the project.

DVBE participation is not limited to any specific portion of the project work. Participation may be from technical firms, but it may also come from nontechnical firms that are part of your daily business operations such as travel agencies, stationary supplies, delivery companies, etc.

NOTE: *The bidder must make actual contact with DVBEs. Services provided by DBVEs must be a reimbursable item under the project.*

**CONTRACTOR CERTIFICATION CLAUSES**  
Std CCC (1-03)

**ATTACHMENT 3**

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about:
    - 1) the dangers of drug abuse in the workplace;
    - 2) the person's or organization's policy of maintaining a drug-free workplace;
    - 3) any available counseling, rehabilitation and employee assistance programs; and,
    - 4) penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on the proposed Agreement will:
    - 1) receive a copy of the company's drug-free workplace policy statement; and,
    - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has

## CONTRACTOR CERTIFICATION CLAUSES

Std CCC (1-03)

made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. UNION ORGANIZING: Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.
5. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

## DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

## CONTRACTOR CERTIFICATION CLAUSES

Std CCC (1-03)

- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
  - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
  - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
  - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be:  
(1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste

## **CONTRACTOR CERTIFICATION CLAUSES**

Std CCC (1-03)

discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.

**Attachment 4**  
**RFP 400-02-401**  
**CUSTOMER REFERENCES**

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION  
CONTRACTS OFFICE

**CUSTOMER REFERENCES**

ATTACHMENT 4

Provide a minimum of 4 references, use additional pages as needed.

Reference #1

Name of Organization	
Address	
Contact Name	
Contact Title	
Contact Phone Number	
Describe the services and products your firm provided to the organization.	

# ATTACHMENT 5

## STANDARD AGREEMENT

STD. 213 (NEW 02/98)



AGREEMENT NUMBER  
400-02-XXX

1. This Agreement is entered into between the State Agency and the Contractor named below  
STATE AGENCY'S NAME  
State Energy Resources Conservation and Development Commission  
CONTRACTOR'S NAME
2. The term of this Agreement is:
3. The maximum amount of this Agreement is: \$ 75,000.00
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	Page(s)	
Exhibit B – Budget Detail and Payment	Page(s)	
* Exhibit C – General Terms and Conditions	GTC-103 Number	(Dated)
Exhibit D – Special Terms and Conditions	Page(s)	
Exhibit E – Additional Provisions	Page(s)	
Exhibit F – Contact Persons	Page	

\*View at [www.dgs.ca.gov/contracts](http://www.dgs.ca.gov/contracts)

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<b>CALIFORNIA Department of General Services Use Only</b>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature) 	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME		
State Energy Resources Conservation and Development Commission		
BY (Authorized Signature) 	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Cheryl Raedel, Contracts Office Manager		
ADDRESS		<input type="checkbox"/> Exempt per
1516 9 <sup>th</sup> Street, Sacramento, CA 95814		

# ATTACHMENT 5

## EXHIBIT A

### SCOPE OF WORK

#### PURPOSE

Contractor agrees to provide to the State Energy Resources Conservation and Development Commission (Commission) the services as described herein:

#### **Task 1           REPORTS**

##### A.       Progress Reports

The Contractor shall provide monthly progress reports which summarize all contract activities conducted by the Contractor including contract expenditures to date. The progress report is due to the Commission Contract Manager within 15 days after the end of the month and each progress report shall coincide with the invoice period. The Commission Contract Manager will specify the report format and the number of copies to be submitted.

##### B.       Final Reports

#### Summary

At the conclusion of the contract, the Contractor shall provide a comprehensive final *administrative* report, and a brief summary of the report, to the Commission Contract Manager. The Contractor shall prepare a summary that includes a statement of the problem, methods or techniques to solve the problem, conclusions and any additional follow-up or ongoing recommendations. The summary shall be prepared in language easily understood by the public or laypersons with a limited technical background.

#### Abstract

The Contractor shall prepare a brief (200 words or less) factual abstract of the most significant information contained in the final report.

#### Final Technical Report

The contractor shall prepare a draft final report that includes Tasks 3 through Task 7. The final report shall consist of each separate report developed under Tasks 3 to 7. The final report shall be submitted in draft form to the Commission Contract Manager for review and approval. The final report shall include the technical paper and the full project reports. The contractor shall review recommendations for changes to the report with the Commission Contract Manager and incorporate the agreed-upon changes into the final version of the report. The Contractor shall meet with the Commission to present the findings, conclusions, and recommendations prior to the due date of the final technical report.

After approval of the final report by the Commission Contract Manager, the contractor shall deliver, six bound paper copies, and one unbound paper copy of the report to the Commission Contract Manager. The unbound copy shall be single sided and camera ready, with graphics that are readable after photocopying. The contractor shall deliver an electronic copy (CD ROM) of full study text in Microsoft Word <sup>TM</sup> (version 97) or PDF file (Adobe version 4.0).

- 1)       **Meeting** - Contractor shall meet with the Commission Contract Manager to present the findings, conclusions, and recommendations. Both the final meeting and the Final Report must occur on or before the ending term of this Agreement.

## ATTACHMENT 5

- 2) **Abstracts** - Contractor shall provide a brief (200 words or less) factual abstract of the most significant information contained in the report.
- 3) **Summary** - The summary shall include a statement of the problem, methods or techniques used to solve the problem, conclusions and any additional follow-up or ongoing recommendations. The summary shall be prepared in language and structure easily understood by members of the public who may have limited technical background.
- 4) **Format**--Final reports and summaries shall be prepared in the following manner:
  - ☐ Camera-ready originals, in black ink, which include originals of oversize material, and ten copies.
  - ☐ Illustrations and graphs sized to 8 1/2 x 11 page.
  - ☐ Contractor's name shall only appear on the cover and title page as follows:

California Energy Commission  
Project Title  
Contract Number  
By (Contractor)

### Deliverables and Due Dates:

Monthly Progress Reports

15<sup>th</sup> of each month  
(following reporting period)  
July 30, 2005  
September 30, 2005

Draft Final  
Final due

### Task 2

#### Task 2 - Initial Plan

The Contractor shall develop an initial plan for the contract indicating the types of inquiries that will be made for each Appliance Group. The Contractor shall compile a list of appliance models of each of thirteen specified groups of appliances being sold or offered for sale in California, using the following methods for each group:

- At least five phone inquiries to manufacturers, wholesalers, and/or retailers;
- At least four site visits to locations in California where sales are made;
- A website search of manufacturers, wholesalers, and/or retailers.

Deliverable: Initial Plan  
Due Date: August 31, 2003

The Commission Contract Manager shall approve plan before beginning Task 3.

#### Task 3 - Surveys

The Contractor shall conduct the surveys per the approved plan. The Contractor shall, for each appliance group, compile three lists of appliance models.

The first list shall contain those models that the contractor has found to be offered for sale in models California. The second list shall contain models listed in the Commission's Active Appliance Database, and identify which of the

## ATTACHMENT 5

appliance models appear to contain questionable data. The third list shall contain those models that are being offered for sale in California but are not included in the Commission's Active Database.

Deliverable: Three lists of appliance models for Appliance Group A  
Three lists of appliance models for Appliance Group B  
Three lists of appliance models for Appliance Group C  
Three lists of appliance models for Appliance Group D

Due Date: October 31, 2003

Deliverable: Three lists of appliance models for Appliance Group E  
Three lists of appliance models for Appliance Group F

Due Date: February 28, 2004

Deliverable: Three lists of appliance models for Appliance Group G  
Three lists of appliance models for Appliance Group H

Due Date: June 30, 2004

Deliverable: Three lists of appliance models for Appliance Group I  
Three lists of appliance models for Appliance Group J  
Three lists of appliance models for Appliance Group K

Due Date: October 31, 2004

Deliverable: Three lists of appliance models for Appliance Group L  
Three lists of appliance models for Appliance Group M

Due Date: February 28, 2005

**EXHIBIT B**  
**Budget Detail and Payment Provision**

1. **INVOICING PROCEDURES:** Upon receipt and approval of an invoice, the State agrees to a monthly payment to the Contractor in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

Invoices shall include the Agreement Number and shall be submitted in duplicate.

California Energy Commission  
Accounting Office, MS-2  
1516 9<sup>th</sup> Street, First Floor  
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to nonrepresented state employees. Contractor may obtain current rates from the Commission Contract Officer. Travel expenses in excess of the state rates cannot be reimbursed.

4. **PAYMENT TERMS:**

☐ *Monthly Flat Rate*                      ☐ *Quarterly Flat Rate*                      ☐ *One –Time Payment*  
☐ *Itemized Monthly Invoice*  
☐ *Advance Payment Not to Exceed \$*  
☐ *Reimbursement/Revenue*  
☒ *Other (Explain) Task Reimbursement*

5. **CONDITIONS:**

- 1) Payment shall be made monthly of services rendered upon receipt and approval of an invoice.
- 2) Payment shall be made to Contractor for an undisputed invoice. An undisputed invoice is an invoice submitted by the Contractor for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- 3) Payment is due to Contractor 45 days from the date a properly submitted undisputed invoice is received by the State.

## ATTACHMENT 5

- 4) The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes.

### 6. **FISCAL RECORD KEEPING**

Contractor shall furnish detailed itemization of, and retain all records relating to, direct expenses reimbursed to Contractor, and to hours of employment on this Contract by any employee of Contractor for which the Commission is billed. Such records shall be maintained for a period of three years after final payment of this Contract.

# ATTACHMENT 5

## EXHIBIT C GENERAL TERMS AND CONDITIONS

### *GTC 103*

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the

## ATTACHMENT 5

State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.  
  
Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 103 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
- a. The Government Code Chapter on Antitrust claims contains the following definitions:
    - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
    - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
  - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
  - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
  - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

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- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”
17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.
18. UNION ACTIVITIES For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

1. Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
2. No state funds received under this agreement will be used to assist, promote or deter union organizing.
3. Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
4. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

# ATTACHMENT 5

## **EXHIBIT D** **Special Terms and Conditions**

### 1. **CONTRACT MANAGEMENT:**

- A. Contractor may change Project Manager but the Commission reserves the right to approve any substitution of the Project Manager.
- B. The Commission may change the Contract Manager by notice given Contractor at any time signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Commission personnel for the performance of services, which are the responsibility of Contractor unless the Commission Contract Manager previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing, coordinating or monitoring functions.

### 2. **STANDARD OF PERFORMANCE:** Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Commission Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply: Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Commission Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission.
- B. The Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Commission directs the Contractor not to reperform a task; the Commission Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

**ATTACHMENT 5**  
**EXHIBIT D**

3. **SUBCONTRACTS:** Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

(CO list subcontractors here)

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- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with, and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Commission staff, and submitting completed products to the Commission Contract Manager.
- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Commission Contract Manager; and the confidentiality provisions in the Reports paragraph of this Agreement.
- D. Additions, Removal or Substitutions of Subcontractors

The Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Commission or Contractor requires the replacement or addition of subcontractor(s), the subcontractor(s) shall be selected using either 1); A competitive bid process conducted in conformance with the State's and Commission's procedures for competitive bids. For example, awards shall be made to the lowest bidder meeting the requirements of the competitive bid and obtaining a minimum of three bids. Approval of the Contractor's competitive bid process shall be subject to the Commission Contract Manager and Commission Contracts Officer prior to release of the bid document. 2); The Commission may direct Contractor to sole source a subcontract with a specific firm, once Commission Contract Manager has obtained sole source approval via Commission internal procedures for sole source contracts. The Commission Contract Manager shall provide justification for the sole source subcontract to the Contracts Officer using the "Subcontractor Add" memo as described below.

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### EXHIBIT D

- 2) The Commission Contract Manager shall complete and submit to the Commission Contract Officer a "Subcontractor Add" memo. This memo identifies the new subcontractor and what bidding method was used to obtain subcontractors (competitive or sole source).
- 3) Contractor shall submit any proposed subcontracts not originally identified in Contractor's proposal, or any substitution of subcontracts to the Commission for its approval prior to Contractor entering into it. Upon the termination of any subcontract, the Commission Contract Manager shall be notified immediately.

4. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) CHANGES:**

The Contractor shall use the DVBE companies identified in its proposal or in any certifications identifying DVBE to be used in this Agreement. Contractor's failure to adhere to the DVBE participation may be cause for termination. In the event a replacement of a DVBE, the Contractor shall request approval from the Commission Contract Officer.

The procedure for replacing any DVBE is:

- A. Contractor shall inform Commission Contract Manager and Contract Officer in writing of the reason for the DVBE replacement.
- B. Contractor shall attempt to replace the DVBE with a new DVBE providing the same services or identify other services in the Agreement a new DVBE could provide. Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE. If replacement is not a DVBE, Contractor shall complete steps in compliance with good faith efforts and submit appropriate DVBE documentation to the Commission Contract Officer.

5. **PERFORMANCE EVALUATION:** Consistent with Public Contract Code Sections 10367 and 10369, the Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

6. **REPORTS:**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A. Both Progress and Final Reports shall be delivered to the Commission Contract Manager.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission  
Project Title  
Contractor Number  
By (Contractor)

**ATTACHMENT 5**  
**EXHIBIT D**

- C. **Ownership:** Each report shall become the property of the Commission.
- D. **Non-Disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Commission Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or public hearings held by the Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Commission or any other party, based on information received from the Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Confidentiality**  
No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the Contract Manager, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager or Contract Officer.

Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

“LEGAL NOTICE”

**"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."**

7. **CONTRACT DATA, OWNERSHIP RIGHTS:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design

## ATTACHMENT 5

### EXHIBIT D

or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.

- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Commission and shall belong to the Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Commission of any contemplated action and the Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Commission so elects, the expense of further preserving data shall be paid for by the Commission. Contractor agrees that the Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

#### 8. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

The Contractor, by signing this Contract, expressly grants to the Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Contract a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to

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### EXHIBIT D

authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Contract, expressly conveys to the Commission all ownership of the physical works of art and fine art produced under this Contract. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Contract.

Contractor shall obtain these same rights for the Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Contract. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Commission from the subcontractor.

9. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Commission requests.
10. **DISPUTES:** In the event of a Contract dispute or grievance between Contractor and the Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Commission Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Commission of the decision at a Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

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### EXHIBIT D

#### B. Binding Arbitration

Should the Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

#### 11. **TERMINATION:**

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Commission, the Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

This Agreement may be terminated for any reason set forth below.

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### EXHIBIT D

#### A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

#### B. Without Cause

The Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

12. **WAIVER:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.
13. **CAPTIONS:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.
14. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:** In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

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**EXHIBIT D**

15. **NOTICE:** Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement.

Delivery by fax or e-mail is not considered notice for the purpose of this Agreement. Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

16. **STOP WORK:** The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

- A. **Compliance** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. **Equitable Adjustment** An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. **Revoking a Stop Work Order** Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

17. **INTERPRETATION OF TERMS:** Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit A, Scope of Work and Exhibit E, Additional Provisions.

18. **CONTRACTOR DUTIES, OBLIGATIONS AND RIGHTS:** The Contractor under the performance of this Agreement has been fully informed of its duties, obligations and rights under Public Contract Code, Section 10381, and any additional Contractor's rights and obligations which should be included.

# ATTACHMENT 5

## EXHIBIT E ATTACHMENT 1

### PARAGRAPHS APPLY TO FEDERALLY FUNDED CONTRACTS ONLY

1. INTELLECTUAL PROPERTY

Refer to Exhibit E, "APPENDIX B, Intellectual Property Provisions – Assistance"

2. ANY SPECIAL CONDITIONS

Grants Office will advise if required

3. PVEA SEP FUNDING LANGUAGE

It is understood and agreed upon by the parties to this Contract that partial funding for this Contract is dependent upon a federal oil overcharge fund agreement that is scheduled to terminate June 30, 2011, and the following provisions apply:

A. Funding for this Contract is subject to the approval of the United States Department of Energy and to any additional restrictions, limitations, or conditions imposed by the United States Department of Energy, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Contract.

B. The Commission has the option to void the Contract under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

4. GRANT REQUIREMENTS

The Office of Management and Budget (OMB) Circulars and /or federal regulations below are incorporated as part of this agreement. These terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations checked below. OMB Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332.

☐ Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

☐ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)

☐ Title 10 Code of Regulations (CFR) Part 600: DOE Financial Assistance Regulations ([www.pr.doe.gov/f600toc.html](http://www.pr.doe.gov/f600toc.html))

☐ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments

☐ OMB Circular A-21: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Institutions of Higher Education (public and private colleges and universities)

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### EXHIBIT E

- ☐ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☐ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☐ Title 48 CFR, Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)  
([www.access.gpo.gov/nara/cfr/cfr-table-search.html](http://www.access.gpo.gov/nara/cfr/cfr-table-search.html))
- ☐ Other: \_\_\_\_\_
- ☐ None

5. PATENTS, DATA, AND COPYRIGHTS

10 CFR 600.27, 48 CFR, and Attachment A apply. 10 CFR 600.27 is available via the Internet at [www.pr.doe.gov/fahome](http://www.pr.doe.gov/fahome).

6. DISCLAIMER OF FEDERAL ENDORSEMENT

Neither contractor nor any subcontractor shall claim Federal endorsement. Any U.S. Department of Energy (DOE.) support for this invention, any other- product, supply, report, etc., resulting from grant DE-FG51-96R020762, A021, therefore, shall not be construed to imply a Federal endorsement of the aforesaid item, either as it exists now, or in any later modified form. The contractor agrees also not to hold the DOE liable for any detrimental consequences which might ensue from any item resulting from grant DE-FG51-96R020762, A021 that could create a hazard to people or to property.

7. RIGHTS OF PARTIES

Patent rights, rights in technical data, copyrights, and rights to invention shall follow the federal requirements. The Commission claims no additional ownership in such rights. However:

- A. The Commission shall be granted a no-cost, nonexclusive, nontransfereable, irrevocable license to use or have practiced for or on behalf of the State of California the subject invention(s) for governmental purposes. Recipient must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions,
- B. The Commission shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this grant,
- C. The Commission shall be granted a royalty-free nonexclusive, irrevocable, nontransferable license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced in the performance of this grant.

**ATTACHMENT 5**  
**EXHIBIT E**

8. NOTICE REGARDING UNALLOWABLE COSTS AND LOBBYING ACTIVITIES FOR PROGRAMS WHOSE PURPOSE IS TO PROMOTE SPECIFIC ENERGY TECHNOLOGIES, SOURCES, OR CONCEPTS

The Contractor or Awardee is cautioned to carefully review the allowable cost and other provisions applicable to expenditures under grant DE-FG51-96R020762, A021. If financial assistance funds are spent for purposes or in amounts inconsistent with the allowable cost or any other provisions governing expenditures this grant, the Government may pursue a number of remedies against the Contractor or Awardee, including in appropriate circumstances, recovery of such funds, termination of the award, suspension or debarment of the Contractor or Awardee from future awards, and criminal prosecution for false statements.

Particular care should be taken by the Contractor or Awardee to comply with the provisions prohibiting the expenditure of funds for lobbying and related activities. Financial assistance awards may be used to describe and promote the understanding of scientific and technical aspects of specific energy technologies, but not to encourage or support political activities such as the collection and dissemination of information related to potential, planned, or pending legislation.

9. LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The contractor or awardee agrees that none of the funds obligated under this agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

10. LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT, 1999)

The contractor or awardee agrees that none of the funds obligated on this agreement shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

11. AGREEMENT ON BUY AMERICAN ACT REQUIREMENTS

A. The Contractor agrees to comply with sections 2 through 4 of the Act of March 3, 1993 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). The Contractor should review the provisions of the Act to ensure that expenditures made under this agreement are in accordance with it.

B. It is the sense of the Congress of the United States that only American-made equipment and products should be purchased with financial assistance provided under this agreement.

12. POLITICAL ACTIVITY LIMITATIONS (HATCH ACT)

A. Except for an officer or employee of an educational institution or system, as defined in 5 U.S.C. Section 1501 (4) (b), an employee or officer of a state or local governmental agency or subdivision, as defined in 5 U.S.C. Section 1501, which receives United States or federal agency funds as payment under a contract, may not:

## ATTACHMENT 5

### EXHIBIT E

- 1) Use or attempt to use his or her official authority or position to interfere with or affect the result of an election or nomination for office;
- 2) Cause or attempt to cause a state or local employee or officer to provide or contribute anything of value to any person or organization for political purposes; or
- 3) Be a candidate for elective office except in a non-partisan election as defined in 5 U.S.C. Section §1503.

B. Subsection (A) (3) of this section does not apply to :

- 1) The Governor or Lieutenant Governor of a state or person authorized by law to act as Governor;
- 2) A duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil-service system; or
- 3) An individual holding elective office.

#### 13. SITE VISITS

The California Energy Commission, the DOE, and/or their designees may make visits to the Contractor's project site, suppliers, subcontractors, and/or demonstration sites as frequently as necessary to:

- A. Review project accomplishments and management control systems, and
- B. Provide such technical assistance, as may be required.

#### **“LEGAL NOTICE”**

**“This document was prepared as a result of work sponsored by the California Energy Commission through a federal grant agreement DE-FG51-96R020762, A021, with U.S. Department of Energy. It does not necessarily represent the views of the Federal Government, the Energy Commission, its employees, or the State of California. The Federal Government, the Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights.”**

#### 14. NON-DISCRIMINATION CLAUSE

If this (Award) Contract is funded in part through federal financial assistance, Contractor and its subcontractors shall comply with Title VI of the Civil Rights Act of 1964 (42 United States Codes Section 2000d, et seq.) and Title IX of the Education Amendments of 1972 (20 United States Code Section 1681, et seq.) and shall not unlawfully discriminate against any beneficiary under this Contract because of race, color, national origin, or sex. For purposes of complying

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with this provision the term “beneficiary” refers to any person or entity in the United States that is intended to benefit directly or indirectly from the performance of this Contract. Contractor and its subcontractors shall inform beneficiaries of their rights under Title VI and Title IX by posting a copy of the Department of Energy’s Nondiscrimination Poster, or its equivalent, in their places of business and by referring questions concerning a beneficiary’s rights to the Commission’s Equal Employment Opportunity Officer.

#### 15. PURCHASE OF RECYCLED PRODUCTS

Under the Resource Conservation and Recovery Act, section 6002, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in the guidelines developed by the Environmental Protection Agency (EPA). The list of products can be obtained at [www.epa.gov/epaoswer/non-hw/procure/products.htm](http://www.epa.gov/epaoswer/non-hw/procure/products.htm) or by contacting the DOE Golden Field Office. Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

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### EXHIBIT E

#### ADDITIONAL PROVISIONS

The following clauses may or may not be included in agreement, Contract Officer to decide when developing this Exhibit if any of the following clauses apply to the specific scope of work or if an additional clause or term is needed.

1. **CONFIDENTIALITY:**

A. Designation of Confidentiality

The Contractor has not identified any confidential items to be delivered under this Agreement.

**OR**

The Commission agrees to keep confidential the items listed in Exhibit E, Attachment 1.

**AND**

The Executive Director makes the determination regarding a designation of confidentiality pursuant to 20 CCR 2505. In the event there is a disagreement regarding the confidential designation, Contractor may appeal the Executive Director's determination to the full Commission.

B. Public and Confidential Deliverables: Identifying and Submitting Confidential Information

All public deliverables including, but not limited to, progress reports, task deliverables and the Final Report shall not contain confidential information unless the confidential information is specifically identified in Exhibit E, Attachment 1 or has been designated as confidential pursuant to 20 CCR 2505. In such event, the Contractor shall prepare the deliverable in two separate volumes, one for public distribution and one to be maintained in the Commission's confidential records located in the Contract's Office. All confidential information submitted by the Contractor shall be marked "Confidential" on each page of the document containing the confidential information and presented in a sealed package to the Commission Contract Officer. (Non-confidential deliverables are submitted to the Contract Manager.) All confidential information will be contained in the "confidential" volume, no confidential information will be in the "public" volume. Only those items specifically listed in Exhibit E, Attachment 1 or in a subsequent determination of confidentiality pursuant to 20 CCR 2505 qualify as confidential deliverables.

C. Future Confidential Information

The Contractor and the Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as deliverables that the Contractor considers to be protectable as confidential information. In this case, Contractor shall follow the procedures for designation of confidential information in 20 CCR 2505 including: an application for confidentiality in subdivision (a)(1-4); the automatic designation of confidentiality in subdivision (a)(5); or information submitted under a contract in subdivision (c)(2)(B). The Commission Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to this Agreement.

## ATTACHMENT 5

- D. Disclosure of confidential information by the Commission may be made only pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.
2. **PROPOSAL INTERPRETATION:** This project shall be conducted in accordance with the terms and conditions of Commission Request for Proposal, 400-02-401 titled, Survey of Regulated Appliances, \_\_\_\_\_ Contractor's proposal dated and this Agreement. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal, this Agreement shall be considered controlling.
3. **CONFLICT OF INTEREST:**
- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall report its findings in its progress report.
- B. Contractor shall submit a completed Fair Political Practices Commission Form 700, "Statement of Economic Interests" for each consultant as directed by the Commission's Contract Manager in consultation with the Commission's Chief Counsel's Office to file a statement.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than 10 percent of the total monetary value of the consulting services contract.

# ATTACHMENT 5

## EXHIBIT F CONTACT PERSONS

<b>Commission Contract Manager:</b>  NAME, MS-XX California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone (916) NUMBER e-mail: <a href="mailto:NAME@energy.state.ca.us">NAME@energy.state.ca.us</a>	<b>Contractor Project Manager:</b>  (Name) (Contractor Name) Address  Phone: Fax: e-mail
<b>Commission Contract Officer:</b>  Elizabeth Stone, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-5125 Fax: (916) 654-4423 e-mail: <a href="mailto:estone@energy.state.ca.us">estone@energy.state.ca.us</a>	<b>Contractor Contract Administrator:</b>  (Name) (Contractor Name) Address  Phone: Fax: e-mail
Deliver confidential deliverables to this location only.	
<b>Invoices, Progress Reports and Non-Confidential Deliverables to:</b>  Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4401	
<b>Legal Notices :</b>  Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: <a href="mailto:craedel@energy.state.ca.us">craedel@energy.state.ca.us</a>	(contractor legal person)